Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:INTL:BR1 – PLR-156555-02
Date:
August 08, 2003

In Re:

TY:

Legend

Corp V =

Corp W =

Corp X =
Corp Y =
Corp Z =
Country A =
State B =
State C =
Business D =
Business E =
Year F =
Year G =
Year H =
Year I =
Date J =

Dear :

This is in response to your July 31, 2002, request for a ruling that the transfer by Corp V of the shares of Corp W to Corp Y will not be treated as a “disposition” triggering the imposition of tax under Treas. Reg. §1.884-2T(d)(5), provided Corp V and Corp Y agree to be bound by the statements attached to their 2000 tax returns, as amended. Additional information was submitted on July 14, 2003.

The rulings contained in this letter are based upon information and representations submitted by the taxpayers and accompanied by penalty of perjury statements executed by appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Corp V was organized in Country A in Year F. It is engaged in Business D. It uses the accrual method of accounting for tax and financial accounting purposes and is a calendar-year taxpayer.

Corp W was organized in Year G in State B. Corp W's principal business activity was to act as a holding company for the shares of Corp X, the principal United States operating subsidiary of Corp V. Corp W also owned the shares of Corp Z, a company engaged in Business E and domiciled in State C.

In Year H, Corp V transferred its U.S. branch operations to Corp W, which further transferred those operations to Corp X in transfers described in section 351 of the Internal Revenue Code (the "Code"). For branch profits tax purposes, Corp W made an election with respect to the first transfer under Treas. Reg. § 1.884-2T(d)(4) to increase its earnings and profits by an allocable portion of Corp V's effectively connected earnings and profits and non-previously taxed accumulated earnings and profits. Consequently, Corp V reduced its earnings and profits in accordance with §1.884-2T(d)(4)(iii) and, pursuant to §1.884-2T(d)(5)(i), attached a statement to its Year H Form 1120F that, upon the disposition of part or all of the stock or securities it owns in Corp W (or a successor in interest), it would treat as a dividend equivalent amount for the taxable year in which the disposition occurs an amount equal to the lesser of (A) the amount realized upon such disposition or (B) the total amount of earnings and profits and non-previously taxed accumulated earnings and profits that was allocated to Corp W pursuant to §1.884-2T(d)(4)(ii).

In Year I, Corp V concluded that a single U.S. holding company should be created to better coordinate the management of its U.S. operations. After the required regulatory and corporate approvals were obtained, Corp V incorporated Corp Y for nominal consideration and transferred all the outstanding stock of Corp W and Corp Z to Corp Y in exchange solely for shares of Corp Y common stock.

Corp V, Corp W, and Corp Y represent the following:

(a) The transfer of the assets of the Corp V branch in Year H was described in section 351 of the Code and resulted in the recognition of no gain or loss to any of the parties;

(b) The transfer of the shares of Corp W to Corp Y in Year I was described in section 351 and resulted in the recognition of no gain or loss to any of the parties; and
(c) None of the earnings and profits allocated to Corp W in Year H has been distributed to Corp V.

Corp V and Corp Y attached the notices required by Treas. Reg. §1.351-3(a) to their Year I returns. The notice filed by Corp V included the following statement in paragraph 7:

> "Transferor has requested a ruling from the IRS National Office, pursuant to Treas. Reg. Sec. 1.884-2T(d)(5)(ii), and agrees to treat its undertaking in the attached Year I statement in respect of Corp X as if such statement referred instead to Transferee. Transferee agrees to succeed to the earnings and profits allocated to Corp X in Year H pursuant to Treas. Reg. Sec. 1.884-2T(d)(4)(i)." [1]

The parties, however, did not request a ruling pursuant to Treas. Reg. §1.884-2T(d)(5)(ii) prior to the transfer in Year I. Therefore, they requested a ruling and received relief under §301.9100 for an extension of time to request this ruling that a tax-free exchange is not a "disposition" triggering branch profits taxes previously deferred under §1.884-2T(d)(4).

Law and Analysis

Under Treas. Reg. §1.884-2T(d)(3), if a foreign corporation engaged in the conduct of a U.S. trade or business makes a transfer under section 351(a) of the Code of all or part of its U.S. assets to a U.S. corporation in exchange for stock or securities in the transferee, the transferor corporation's dividend equivalent amount will be determined without regard to the section 351 transfer, provided the U.S. transferee corporation makes and election under §1.884-2T(d)(4) to increase its earnings and profits by an allocable portion of the transferor corporation's effectively connected earnings and profits and non-previously taxed accumulated earnings. The transferor must also file a statement agreeing that, upon disposition of part or all of the stock or securities it owns in the transferee, it will treat as a dividend equivalent amount for the taxable year in which the disposition occurs an amount equal to the lesser of (A) the amount realized upon such disposition or (B) the total amount of the effectively connected earnings and profits and non-previously taxed accumulated earnings and profits that was allocated from the transferor corporation to the transferee corporation pursuant to the election under §1.884-2T(d)(4)(i). §1.884-2T(d)(5)(i).

[1] On Date J, Corp V filed an amended Form 1120F, revising the notice to incorporate the name of the correct transferor corporation, Corp W.

Corp V and Corp X made the filings and entered into such agreements in connection with the domestication of Corp V's U.S. branch in Year H in accordance with §§1.884-2T(d)(4)(i) and (d)(5)(i) respectively.

Pursuant to Treas. Reg. §1.884-2T(d)(5)(ii), a "disposition" does not include a transfer of stock or securities of the transferee corporation by the transferor corporation pursuant to a complete liquidation described in section 332(b) or a transfer pursuant to a reorganization described in section 368(a)(1)(F). Any other transfer of transferee shares that qualifies for non-recognition of gain or loss shall be treated as a disposition for purposes of paragraph (d)(5)(i), unless the Commissioner has determined otherwise "by published guidance or by prior ruling issued to the taxpayer upon its request." The Commissioner has not determined otherwise by published guidance. Although Corp V failed to request a ruling prior to the transfer to Corp Y of the shares of Corp W in Year I, Corp V and Corp Y did substantially comply with the requirement to file the statements that would have been required had they requested a ruling prior to the transfer, and section 9100 relief with respect to requesting a ruling prior to the transfer has been granted.

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Assuming the Year H and Year I transactions qualify under section 351, and provided that Corp V complies with the agreement included in its statement, as amended:

(a) Corp V's transfer of the stock of Corp W to Corp Y will not constitute a "disposition" of all or part of the stock of Corp W, within the meaning of §1.884-2T(d)(5)(ii);
(b) Corp W's earnings and profits will be reduced by an amount equal to the earnings and profits allocated to Corp Y pursuant to the foregoing election; and
(c) Corp Y's earnings and profits will be increased by the amount determined under §1.884-2T(d)(4)(ii).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter under other provisions of the Code and regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from the transactions not specifically covered by the above rulings. In particular, no opinion is expressed (i) with respect to the application of section 351 and related provisions to the transactions discussed or referenced in this letter; and (ii) no opinion is expressed with respect to whether the Federal income tax return of Corp Y for 2000 was timely filed (including extensions).

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your taxpayer.

Sincerely,

Elizabeth U. Karzon
Chief, Branch 1
Office of the Associate Chief Counsel

cc: